

INFORMATION BULLETIN

2008-8

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Reduction of 25% of the minimum withdrawal amount from a registered retirement income fund (RRIF) for 2008 and other fiscal measures

This information bulletin describes measures contained in the Notice of Ways and Means Motion made public on November 28, 2008, by the Minister of Finance of Canada, that will be incorporated into Québec's tax legislation and regulations, in particular the reduction of 25% of the minimum withdrawal amount from a registered retirement income fund (RRIF) for 2008.

It also describes the application details of other measures, for the most part technical, designed in particular to improve the coherence of the tax system or ensure its integrity.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et de la fiscalité at 418 691-2236.

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Reduction of 25% of the minimum withdrawal amount from a registered retirement income fund (RRIF) for 2008 and other fiscal measures

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1. MEASURES CONCERNING INDIVIDUALS

1.1 Services eligible for the tax credit for respite expenses of informal caregivers

To acknowledge the need for informal caregivers to refresh themselves and take respite, it was announced, as part of the March 13, 2008 Budget Speech, that the expenses incurred for specialized respite services would give rise, as of taxation year 2008, to a refundable tax credit of up to \$1 560 per year.

For the purposes of this tax credit, the services considered as specialized respite services are those consisting in giving, in place of the informal caregiver, home care to a person with a significant disability, where the services are provided by an individual who holds a recognized diploma or degree (from the vocational studies diploma in family and social assistance to the bachelor's degree in nursing).

The individual supplying specialized respite services can be an employee of the informal caregiver or act as a self-employed worker or employee of a corporation, a partnership or another entity.

In this regard, it was announced that where an individual supplies services as an employee of a social economy business, such individual would be deemed to hold a recognized diploma, provided the social economy business is accredited by the ministère de la Santé et des Services sociaux to offer specialized respite services.

The requirement concerning having a recognized diploma was imposed to ensure that the services supplied are comparable in quality to those supplied as part of an intervention plan or an individualized service plan, referred to hereunder as "service plan", developed by an institution of the public health and social services network.¹

When a service plan is developed, the public network oversees the quality of the services supplied, whether they are provided by an individual who is hired by private agreement thanks to the direct allowance² or who acts as an employee of a social economy business or of another entity.³

1 The intervention plan is designed to identify the needs of a user and his entourage, the objectives sought, the means to use and the expected time during which services must be supplied. The individualized service plan is required where services must be supplied to a user and his entourage by resources from many institutions. The institution supplies most of the services in question or the one designated after consultation that must develop the individualized service plan, which generates as many intervention plans as there are institutions involved.

2 Essentially, the direct allowance, which is a program of the ministère de la Santé et des Services sociaux, allocates certain sums of money to a user to enable him to hire the employee he chooses to obtain home support services.

3 For example, a community organization.

Where, to obtain services in addition to those provided under a service plan, an informal caregiver calls on an individual whose services are already retained by the direct allowance or on an entity proposed by the institution that developed such a plan (a social economy business for example), it seems superfluous to revalidate the quality of the services offered by requiring that the individuals providing the additional services hold a recognized diploma or that the entity that employs them be accredited.

In the circumstances, no procedure will be implemented by the ministère de la Santé et des Services sociaux to accredit the social economy businesses offering specialized respite services.

However, the tax legislation will be amended to stipulate that an individual who supplies home care services to a person with a significant disability will be deemed to hold a recognized diploma in the following cases:

- he is an individual whose services are already retained by the direct allowance and provides the informal caregiver of such person with services in addition to those paid through the direct allowance;
- he acts as an employee of an entity (social economy business or other) that is one of those proposed, to supply home care services, by the institution that developed a service plan.

This amendment will apply as of taxation year 2008.

1.2 Increase in exemptions granted for setting premiums under Québec's prescription drug insurance plan

The basic prescription drug insurance plan introduced by the Québec government ensures all Quebecers fair access to the medication required by their state of health. Coverage under this plan is provided by the Régie de l'assurance maladie du Québec (RAMQ), or by insurers transacting group insurance or administrators of private-sector employee benefit plans.

As a general rule, persons not insured by the private sector throughout a year must, when filing their income tax return for such year, pay a premium to fund Québec's prescription drug insurance plan. To make allowance for households' ability to pay, the premium payable for a year is determined on the basis of family income. However, to improve the fairness of the system by ensuring that no person pays a premium until his income reaches a certain threshold, deductions are allowed in the calculation of family income. Since the introduction of Québec's prescription drug insurance plan, these deductions, which vary with household composition, have been adjusted annually in particular to protect households' purchasing power.

Accordingly, to maintain the principles underlying the determination of the amount of the premium payable to Québec's prescription drug insurance plan, the amount of each of the deductions currently allowed to set the threshold from which premiums become payable will be adjusted for 2008.

The following table shows the amount of each of the deductions allowed for 2008 according to household composition.

Québec's prescription drug insurance plan (2008)

Deductions varying with household composition

(Dollars)

Household composition	Amount of the deduction
1 adult, no children	13 760
1 adult, one child	22 310
1 adult, 2 or more children	25 280
2 adults, no children	22 310
2 adults, one child	25 280
2 adults, 2 or more children	28 020

1.3 Purchase or redemption of shares of the Fonds de solidarité des travailleurs du Québec at retirement

In addition to fostering the creation of jobs and investment in Québec companies, the objective of the Fonds de solidarité des travailleurs du Québec (F.T.Q.), hereunder the "Fonds", is to raise awareness and encourage workers to save for retirement by purchasing the shares it issues.

The government supports the Fonds in working to achieve its broad objectives by providing a non-refundable tax credit to individuals who become shareholders of the Fonds.

Since, in essence, any acquisition of shares of the Fonds must be considered an investment for retirement, the shareholder can request redemption of his shares solely in the cases stipulated in the Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.), hereunder the "Act to establish the Fonds".

Currently, a shareholder who reaches age 65 or who opted, after reaching age 55, for early retirement or retirement can request redemption of his shares. However, only the shares acquired at least 730 days previously can be redeemed.

Once an individual has obtained, for one of these reasons, the redemption of his shares, he can no longer receive the tax credit in respect of the acquisition of shares of the Fonds for the shares acquired before⁴ or after the redemption.

⁴ For greater clarity, an individual who did not receive, for the years prior to the redemption, all of the tax credit to which he was entitled is no longer authorized to claim a deduction, in calculating his tax otherwise payable, regarding the unused portion of this tax credit.

Moreover, a shareholder who availed himself of certain retirement rights can invoke the policy of purchase by agreement, passed by the board of directors of the Fonds and approved by the Minister of Finance, to have the Fonds purchase his shares that he has held for at least two years.

Under this policy, which is exceptional, a shareholder can, provided certain conditions are satisfied, request purchase by agreement of his shares, if he has reached age 50 and has taken early or phased retirement or, where early retirement is stipulated by a registered pension plan, if he has reached age 45.

Over the years, many changes have been made to the policy of purchase by agreement of the Fonds to adapt it to the various options available to workers who wish to withdraw partially or totally from the labour market.

Just recently, the policy was changed to allow individuals who have opted to work less and those who become active once again to continue, after obtaining redemption of their shares, to purchase shares of the Fonds. This change reflects the fact that these individuals can be bound by agreements under whose terms they must acquire shares of the Fonds.

Since, these days, the situations covered by the policy of purchase by agreement regarding shareholders availing themselves of certain retirement rights are occurring increasingly frequently, amendments will be made to the Act to establish the Fonds to allow a larger number of shareholders who have availed themselves of a retirement right to recover their investment on request rather than by invoking the policy of purchase by agreement.

In addition, corollary amendments will be made to the Taxation Act to ensure in particular that all shareholders who obtain redemption of their shares following the exercise of a retirement right can no longer receive the tax credit in respect of the acquisition of shares of the Fonds.

❑ Amendments to the Act to establish the Fonds

The Act to establish the Fonds stipulates that a share or a fraction of a share of class "A" is redeemable by the Fonds at the request of the person who acquired it from the Fonds at least 730 days previously if, after reaching age 55, he availed himself of an early retirement or retirement right, or if he reached age 65.

To incorporate, into this redemption on request criterion, the situations that were covered by the policy of purchase by agreement regarding shareholders that availed themselves of certain retirement rights, the Act to establish the Fonds will be amended to lower, from 55 to 45, the age at which a shareholder who availed himself of an early retirement or retirement right can request the redemption of his shares acquired at least 730 days previously, and to establish the circumstances under which a shareholder may be considered to have availed himself of such right.

For the purpose of this redemption criterion, a person will be considered to have availed himself of an early retirement or retirement right if, at the time redemption is requested, he is in one of the following situations:

1. he is at least age 45, he is covered, or will be covered within three months of the request, by early retirement under a registered pension plan and his estimated earned income for the twelve months following the start of early retirement is less than or equal to 25% of the maximum allowable earnings established for the year of the request under the Act respecting the Québec Pension Plan;
2. he is at least age 50 and receives, or will receive within three months of the request, a retirement pension from the Québec Pension Plan or an equivalent plan or could have received such a pension had he been at least age 60;
3. he is at least age 55 and receives, or will receive within three months of the request, a life annuity under a pension plan, an annuity under a registered retirement savings plan or a deferred profit-sharing plan or a payment out of or under a registered retirement income fund, unless such annuity or payment is received because of the death of his spouse;
4. he is at least age 45, he is the annuitant of a registered retirement savings plan or a registered retirement income fund, he has not held a paid job or carried on a business during 730 days preceding the year of the redemption request and the person who is his spouse at that time, other than a person under age 60 who has entered into an agreement with his employer to reduce his regular work time by at least 20% until retirement, satisfies the conditions stipulated in any of paragraphs 1 to 3;
5. he satisfies the conditions stipulated by a regulation passed by the board of directors of the Fonds and approved by the Minister of Finance.

In addition, the Act to establish the Fonds will be amended to stipulate that the redemption request that is submitted by a shareholder who is at least age 60 and made for the reason that he reached an agreement with his employer to reduce his regular work time by at least 20% until his retirement may apply for a given year only on the shares or fractions of shares whose redemption is necessary to offset the reduction in pay suffered for that year, up to the balance in his account of shares or fractions of shares at the time of his first redemption request made for such reason divided by the lesser of 11 and the number of years the agreement must cover.

Moreover, to facilitate the processing of requests for redemption or for purchase by agreement that may be submitted to the Fonds, an amendment will be made to the Act to establish the Fonds to stipulate that any request for redemption or for purchase by agreement must be submitted on the appropriate form provided by the Fonds and accompanied by the information and documentation prescribed by regulation of the board of directors.

These changes will be applicable as of the day following the day of publication of this information bulletin. The policy of purchase by agreement of the Fonds will be adjusted accordingly.

For greater clarity, where, before the day that follows the day of publication of this information bulletin, an individual submits a request for the purchase of one of his shares to the Fonds invoking one of the criteria of the policy of purchase by agreement dealing with early retirement or phased retirement and the share is not purchased by the Fonds before such day, the request for purchase relating to such share must be treated by the Fonds as a redemption request.

☐ Corollary amendments to the Taxation Act

An individual who acquires, as first acquirer, shares issued by a labour fund⁵ is entitled to a non-refundable tax credit equal to 15% of the issue price of such shares, up to a total tax credit of \$750 per year. Any unused portion of this tax credit can be carried forward to subsequent years.

This tax credit provides workers with an incentive to save for their retirement while participating in the development of Québec's economy. In view of its objectives, it may not, as a general rule, be granted to an individual who, before the end of a given taxation year, has reached age 55 and has availed himself of an early retirement or retirement right.⁶

However, since such an individual can continue to hold a job or carry on a business, this rule includes a streamlining measure that makes it possible to consider that an individual — other than an individual who has reached age 65 or has obtained redemption of all or part of the shares he held in a labour fund — did not avail himself of an early retirement or retirement right at the end of a given taxation year, if the total of his eligible salary for the year⁷ and his income for the year from a business exceeds \$3 500.

Given the amendments that will be made to the Act to establish the Fonds, the Taxation Act will be amended to stipulate that an individual may not receive, for a given taxation year after taxation year 2007, the tax credit in respect of the acquisition of a share of a labour fund, if such individual reached, before the end of the year, age 45 and availed himself of an early retirement or retirement right or, where the acquired share is held by a trust governed by a registered retirement savings plan or a registered retirement income fund under which the spouse of the individual is the annuitant, his spouse reached, before the end of the year, age 45 and availed himself of an early retirement or retirement right.

5 Namely the Fonds or the Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi (Fondaction).

6 The same holds true if the share acquired by an individual is held by a trust governed by a registered retirement savings plan or a registered retirement income fund under which the annuitant is the spouse of the individual, where such spouse reached, before the end of the given taxation year, age 55 and availed himself of an early retirement or retirement right.

7 The eligible salary of an individual for a year must be determined in accordance with the Act respecting the Québec Pension Plan taking into account, if applicable, the income he received during a period of disability during the year.

The Taxation Act will also be amended to stipulate that, for the purposes of the streamlining measure making it possible to consider that an individual did not avail himself of an early retirement or retirement right at the end of a given taxation year, an individual will be deemed to have obtained the redemption of a share of the Fonds before the end of the given year, if such share was purchased by the Fonds before the day following the day of publication of this information bulletin further to the application of one of the criteria of its policy of purchase by agreement dealing with early retirement or phased retirement. This amendment will apply as of taxation year 2008.

2. MEASURES CONCERNING BUSINESSES

2.1 Change to the refundable tax credit for francization in the workplace

The government considers that learning French is essential to the social, cultural and professional integration of immigrants who settle in Québec, and accordingly a refundable tax credit for francization in the workplace was introduced in the March 13, 2008 Budget Speech to help employers cover the costs of their employees' participation in training relating to francization in the workplace.⁸

Briefly, this temporary tax assistance consists of a refundable tax credit of 30% that any eligible employer operating in Québec can claim regarding training expenses relating to francization it incurs for its employees.

Moreover, to accelerate the integration of immigrants in Québec society, the ministère de l'Immigration et des Communautés culturelles (MICC) offers a free program of francization in the workplace, namely the Programme d'intégration linguistique des immigrants (PILI).

Most training courses that are part of PILI are taken outside normal work hours. However, the availability of the tax credit could encourage employers to allow their employees to receive training during normal work hours and thus increase the number of employees receiving training. Because the training offered by the MICC is free, employers cannot obtain the tax credit, since it is calculated on the basis of the cost of the training offered.

Accordingly, the tax credit will be changed so that wages paid to employees during hours of training can be taken into account, thus encouraging employers to allow their employees to receive training under PILI during working hours.

☐ Eligible training expenditure

An eligible employer may claim a refundable tax credit, for a taxation year, equal, for each eligible employee, to 30% of the eligible training expenditures incurred in his regard during such taxation year.

8 MINISTÈRE DES FINANCES DU QUÉBEC, 2008-2009 Budget, *Additional Information on the Budgetary Measures*, March 13, 2008, Section A, page A.85, measure 2.4.

In general, the eligible training expenditure of an eligible employer regarding eligible training,⁹ for a taxation year, means an amount equal to the total of the following amounts he incurs regarding such year:

- an amount equal to the cost of the eligible training in which an eligible employee of the eligible employer is enrolled;
- an amount equal to the lesser of the following amounts:
 - the wage or salary, calculated according to part I of the Taxation Act, paid to an eligible employee of the eligible employer and attributable to the period during which he attended the eligible training;
 - an amount equal to double the cost of the eligible training in which an eligible employee of the eligible employer is enrolled.

☐ Change to the calculation of an eligible expenditure

In the case of training that is part of PILI, since the cost of the eligible training is equal to zero, the amount of the eligible training expenditure will always be nil even though the training is offered during working hours regarding which the employer pays wages.

To enable an employer otherwise eligible for the tax credit to receive it regarding the wages he pays, the cost of the eligible training will be deemed, solely for the purposes of the limit relating to wages paid to an eligible employee while the latter attends eligible training, to be an amount equal to the product of \$90 multiplied by the number of hours the eligible training lasts.

In the case where the same training that is part of PILI is given to a group formed of eligible employees from more than one eligible employer, the amount of \$90 must be shared among such employers in proportion to the number of eligible employees of each of the employers who are enrolled in the training.

Accordingly, although the cost of the eligible training is equal to zero, an eligible employer may receive a tax credit equal to the lesser of the wages paid to an eligible employee and attributable to the period during which such employee attends the eligible training and twice the deemed cost of the eligible training.

The application of this amendment will be declaratory.

⁹ Eligible training, regarding an eligible employee of an eligible employer, means a course designed to foster the francization of immigrants in which the eligible employee of the eligible employer is enrolled, given by an eligible trainer under a contract entered into by the employer and the trainer.

2.2 Changes to the refundable tax credit for the production of shows

The refundable tax credit for the production of shows applies to the labour expenditure attributable to services supplied for the production of eligible shows. The tax credit is equal to 29.1667% of the amount of eligible labour expenditures, which are, however, limited to 45% of the production expenses of the show. In addition, the tax credit for an eligible show may in no event exceed \$750 000.

For a show to be eligible, it must be a musical, drama, comedy, mime or magic show or, since March 2008, a circus, aquatic or ice show.¹⁰

More specifically, the March 2008 change relating to circus, aquatic and ice shows applies regarding a show for which an application for an advance ruling, or a final certification application if no application for an advance ruling has been filed, is filed with the Société de développement des entreprises culturelles (SODEC) after March 13, 2008, in relation to an eligibility period of the show beginning after that day.

Moreover, for the purposes of obtaining the tax credit, SODEC must issue a certificate according to which the show satisfies certain eligibility criteria bearing in particular on its Québec content. In addition, the certificate must bear separately on the following three periods:

- the period covering the pre-production of the show until the end of the first full year following its initial public performance (first eligibility period);
- the period covering the second full year following the initial public performance (second eligibility period);
- the period covering the third full year following the initial public performance (third eligibility period).

However, in relation to a show, SODEC does not deliver a certificate regarding each of these periods if the eligibility conditions of the show are not met for the first eligibility period.

The application date relating to the eligibility of a circus, aquatic or ice show is such that it deprives a show belonging to any of these categories and whose first eligibility period started on or before March 13, 2008 of the tax credit for the production of shows. In such a case, SODEC cannot issue a certificate regarding an eligibility period because the eligibility conditions of the show could not be satisfied for the first eligibility period, since this type of show did not give rise to the tax credit from the start of such period.

To enable the producer of a show that started on or before March 13, 2008 to receive the tax credit regarding such show, a change will be made to the criteria for SODEC's issuing a certificate. In addition, the application date of the change announced in the 2008-2009 Budget Speech as to the eligibility of a circus, aquatic or ice show will be changed.

10 MINISTÈRE DES FINANCES DU QUÉBEC, 2008-2009 Budget, Additional Information on the Budgetary Measures, March 13, 2008, Section A, page A.110, measure 2.7.1.

2.2.1 Issuing of a certificate by SODEC

In deciding on the eligibility of a show for the tax credit for the production of shows, the eligibility criteria inherent in the production of the show must be distinguished from those that are independent of the producer's will. Accordingly, the government's decision to make a category of shows eligible after the event is a factor beyond the control of the producer of the show and not an eligibility criterion that the producer could decide to satisfy or not. For this reason, the eligibility of a show for the tax credit for the production of shows should not be compromised on this basis.

Consequently, the legislation will be amended so that SODEC can all the same issue a certificate regarding an eligibility period of a circus, aquatic or ice show started on or before March 13, 2008 and not ended on that date, or started after that date.

This amendment will apply regarding a show whose third eligibility period was not ended on March 13, 2008.

2.2.2 Replacement of the application date

In accordance with the change described in sub-section 2.2.1, it is appropriate to replace the application date of the change announced in the 2008-2009 Budget Speech as to the eligibility of a circus, aquatic or ice show with a date based on the time when the eligible expenditures relating to show are incurred.

First, in order to include in the calculation of the tax credit for the production of a show that is part of one of these categories the eligible expenditures incurred in an eligibility period that started on or before March 13, 2008 and was not ended on that date, the application date initially announced will be withdrawn and the change relating to the eligibility of a circus, aquatic or ice show will apply in relation to eligible labour expenditures incurred after March 13, 2008.

Next, to avoid penalizing an eligible corporation that produced a circus, aquatic or ice show that, on March 14, 2008, did not satisfy all the eligibility conditions required for the purposes of the tax credit, the change relating to the eligibility of these categories of shows will also apply to such a show but, in this case, in relation to eligible labour expenditures incurred as of the date, after March 14, 2008, when these conditions are satisfied.

2.3 Inter-provincial tax avoidance and reserve for capital gain

The tax legislation stipulates that the capital gain from the alienation of property in a year is calculated by subtracting from the proceeds of the alienation the total of the adjusted cost base of the property, the expenses incurred for such alienation and a reasonable reserve relating to the portion of the proceeds of alienation that is not payable to the taxpayer until after the end of the year.

Where the proceeds of the alienation of the property are not receivable during the year of its sale, the reserve enables the gain from the alienation to be spread over a period not exceeding five or ten years depending on the nature of the property.

Currently, Québec's tax legislation stipulates that the amount claimed on account of a reserve by a taxpayer cannot exceed the amount claimed on such account as a deduction for the purposes of the federal tax legislation. This restriction was introduced in 1997 to forestall avoidance transactions based on the inclusion, under the federal legislation, of a smaller reserve than the one claimed under Québec's legislation.

Regardless of whether the privilege of claiming a reserve at the federal level was exercised or not, this restriction allows full discretion to not claim any reserve for the purposes of Québec's tax legislation.

This leeway can leave room for transactions whose only purpose is to avoid Québec tax or tax of another province. Indeed, it is technically possible to develop an avoidance scheme based essentially on the fact that when a property is sold, a reserve is claimed at the federal level while for the same transaction no reserve is claimed for the purpose of Québec tax.

To prevent taxpayers from choosing this option, the tax legislation will be amended to bind the Québec election to claim a reserve for capital gain to the federal election. Accordingly, in general, the amount of a reserve for capital gain for the purposes of Québec tax, will be equal to the amount of the reserve for capital gain for the purposes of federal tax.

However, to avoid undesirable results, the legislative amendment will provide that the various tax attributes specific to Québec's tax system will be taken into account in establishing the amount of the reserve for capital gain.

This amendment will apply regarding any amount that can be claimed on account of this reserve in a tax return filed the day of publication of this information bulletin or after that day.

2.4 Refundable tax credit for technology adaptation services

The refundable tax credit for technology adaptation services was introduced to further support businesses in their efforts to cooperate in research and innovation.

Briefly, the tax credit an eligible corporation may claim, for a taxation year, is determined by multiplying by 50% the amount of eligible expenditures the eligible corporation incurred, during such year, with an eligible liaison and transfer centre or an eligible college technology transfer centre, as the case may be.

The Regulation Respecting the Taxation Act will be amended to recognize le Centre de développement des bioproduits as well as the Centre d'excellence en maintenance industrielle du Cégep de Sept-Îles, as eligible college technology transfer centres for the purposes of the refundable tax credit for technology adaptation services.

This recognition will apply to eligible expenditures incurred by an eligible corporation either after December 27, 2007 with the Centre de développement des bioproduits, or after March 17, 2008 with the Centre d'excellence en maintenance industrielle du Cégep de Sept-Îles, in relation to products or services offered by these eligible college technology transfer centres after these dates.

Moreover, because of the transfer of activities relating to the bio-products sector to the Centre de développement des bioproduits, the Centre de développement bioalimentaire du Québec inc. (CDBQ) will no longer be an eligible college technology transfer centre for the purposes of the refundable tax credit for technology adaptation services as of December 28, 2007.

2.5 Recognition of an eligible public research centre

A taxpayer may obtain a refundable tax credit for university scientific research and experimental development (R&D) of 35% in relation to R&D activities where such activities are carried out by an eligible public research centre, under a contract the taxpayer concludes with such centre.

In this regard, it is the responsibility of the ministère des Finances to recognize a research centre as an eligible public research centre.

More specifically, to be recognized as an eligible public research centre for the purposes of the tax credit for university R&D, a research centre must demonstrate its capacity, in terms of human, material and financial resources, to carry out R&D work on behalf of businesses. Accordingly, the employees must have the qualifications required to carry out R&D work awarded on a sub-contracting basis to the research centre, and the research centre must have premises and equipment that enable it to do the work in its field of expertise.

In addition, the research centre must obtain most of its financing from public funds.

Moreover, all research centres recognized by the ministère des Finances as eligible public research centres, for the purposes of the tax credit for university R&D, must annually confirm with the ministère des Finances that they satisfy the eligibility criteria set out above. This annual return relates to a calendar year and must be filed no later than the last day of February following such calendar year.

Lastly, an eligible public research centre must advise the ministère des Finances as soon as a change occurs involving human, physical or financial resources that could compromise its capacity to carry out R&D work for businesses or to satisfy the requirement concerning the source of its funding.

A new research centre will be recognized for the purposes of the tax credit for university R&D, namely the Centre d'aide technologique aux entreprises - Côte-Nord du Québec.

This recognition will apply regarding R&D carried out after June 30, 2008, under an eligible research contract concluded after that date.

3. MEASURES RELATING TO THE NOTICE OF WAYS AND MEANS MOTION OF NOVEMBER 28, 2008

On November 28, 2008, the Department of Finance Canada, by means of a news release,¹¹ published a Notice of Ways and Means Motion to implement certain provisions of the budget tabled in Parliament on February 26, 2008, to implement certain provisions of the economic and fiscal statement tabled in Parliament on November 27, 2008, and to implement other fiscal and economic measures.

In the March 13, 2008 Budget Speech, the ministère des Finances du Québec included a list of measures contained in the federal government's Budget Plan 2008,¹² tabled in the House of Commons on February 26, 2008, that would be incorporated into Québec's tax legislation and regulations.¹³

Some of the measures mentioned in the Notice of Ways and Means Motion released November 28, 2008, will be added to the list of measures already retained. However, these measures will only be adopted following the assent given to any federal legislation or adoption of any federal regulation giving effect to them, taking into account the technical changes that may be made to them before such assent or adoption. Lastly, these measures will apply on the same dates as for the purposes of the federal tax system.

☒ Measures retained

Québec's tax legislation and regulations will be amended to incorporate, with adaptations on the basis of their general principles, the federal measures relating to:

- inclusion, in the calculation of income, of amounts received under the Wage Earner Protection Program (10(2) in part),¹⁴ subject to the specific features described below;
- the adjustment made to the calculation of the deduction for moving expenses to reflect amounts received under the Wage Earner Protection Program (12);
- the extension of the general rules concerning capital gains and losses at the time of acquisition of control of a corporation so that they apply to gains and losses on foreign exchange in the case of debt securities denominated in foreign currencies (24), subject to the clarifications made below;

¹¹ News release 2008-096.

¹² DEPARTMENT OF FINANCE CANADA, *The Budget Plan 2008*, February 26, 2008, Annex 4, Tax Measures: Supplementary Information and Notices of Ways and Means Motions.

¹³ MINISTÈRE DES FINANCES DU QUÉBEC, *2008-2009 Budget, Additional Information on the Budgetary Measures*, March 13, 2008, Section A, p. A.127 to A.131.

¹⁴ The references in parentheses correspond to the section or paragraph numbers of the Notice of Ways and Means Motion of November 28, 2008.

- inclusion, in the calculation of taxable income earned in Canada by a non-resident, of amounts received under the Wage Earner Protection Program (25);
- the adjustment made to earned income required for the purposes of the refundable supplement for medical expenses to reflect amounts received under the Wage Earner Protection Program (30);
- the 25% reduction of the minimum withdrawal amount from a registered retirement income fund (RRIF) for 2008 (44).

Moreover, while they do not involve any significant legislative or regulatory amendments, the following measures will also be retained for the purposes of Québec's tax system,¹⁵ i.e. the measures relating:

- to the deduction of amounts paid to a registered retirement savings plan (RRSP), a RRIF or to acquire an annuity that are attributable to the reduction, for 2008, of the minimum withdrawal amount from a RRIF or from certain defined-contribution registered pension plans (RPPs) (11);
- to the deductions on account of RRSPs bearing on the definitions of the expressions "earned income" and "unused RRSP deduction room" (42);
- to the qualified investments that a trust governed by a deferred profit-sharing plan or by certain other registered plans can hold (53);
- to the adjustments made to the calculation of pension credits and the past service pension adjustment (98) as well as to the reduction of the deduction limit RRSP (99) to reflect the fifth protocol amending the Convention between Canada and the United States of America with respect to taxes on income and capital;
- to the rules on the 25% reduction of the amount of variable benefits that is payable on the account of a participant in a defined-contribution provision of a RPP and to those allowing payment of a contribution to an RPP in the case where a participant received, in 2008, an amount greater than the reduced minimum (100).

¹⁵ As part of the Budget Speech of April 26, 1990, it was announced that Québec's tax legislation and regulations would be amended so that the rules introduced in the reform of tax assistance for retirement savings would be the same as those applicable for federal income tax purposes. In view of the degree of complexity of the provisions relating to this reform, both for individuals, employers and the tax administration, it was specified that the federal rules would not be incorporated into Québec's tax legislation and regulations and that the legislative process that would be used would refer to them.

❑ Clarifications concerning certain measures

■ Measures relating to the Wage Earner Protection Program

In view of the specific features of Québec's tax system, various amendments will be made to Québec's tax legislation to reflect income replacement benefits received by a taxpayer under the Wage Earner Protection Program.

More specifically, amendments will be made to the Taxation Act to stipulate that these benefits will be considered, on the one hand, as income giving rise to the deduction for support services and products for a person suffering from an impairment and to the deduction for workers and, on the other, as work income for the purposes of the refundable tax credit granting a work premium (general or adapted) just as amounts received on account of wages or salary.

In addition, correlative adjustments will be made to stipulate that the repayment of a benefit received under the Wage Earner Protection Program may give rise to a deduction in the calculation of income and that the payor of such benefit will be required to withhold income tax at source.

Moreover, the Act respecting the Régie de l'assurance maladie du Québec will be amended to stipulate that benefits received under the Wage Earner Protection Program will not be subject to the contribution payable by individuals to the Health Services Fund.

These changes will be applicable on the same date as the one on which the federal measure relating to the inclusion, in the calculation of income, of amounts received under the Wage Earner Protection Program (10(2) in part) will be applicable.

■ Measure relating to gains and losses on foreign exchange in the case of debt securities denominated in foreign currencies

Concerning the possibility for a corporation of making an election so that the new rules concerning capital gains and losses at the time of acquisition of control of a corporation apply to any acquisition of control occurring after 2005, the election made in this regard for the purposes of the federal income tax will be deemed to be made for the purposes of Québec income tax and, where no election is made for the purposes of the federal income tax, no election will be possible for the purposes of Québec income tax.

❑ Subsequent announcements

■ Measures relating to the tax convention between Canada and the United States

Many of the proposed changes in the Notice of Ways and Means Motion of November 28, 2008, anticipated the ratification of the fifth protocol amending the Convention between Canada and the United States of America with respect to taxes on income and capital.¹⁶ On December 15, 2008, the Minister of Finance of Canada announced the coming into force of this fifth protocol.¹⁷

Briefly, the updated convention stipulates, among other things, the possibility for limited liability companies to avail themselves of the benefits of the convention, avoidance of double taxation of capital gains of persons who migrate from one country to the other, the mutual recognition of contributions to a pension plan as well as the clarification of tax rules applicable to stock options.

However, it is established in jurisprudence that a tax convention signed by the government of Canada can bind a province in a matter that falls within its jurisdiction only to the extent that such province has legislated accordingly.

In the absence of a tax agreement entered into by Québec and a foreign state, the Québec government, under its tax legislation and regulations, agrees to take into consideration certain provisions of the tax conventions that the government of Canada has entered into and that has force of law in Canada, in order to prevent the taxpayers concerned from suffering double taxation.

In principle, such agreement is limited almost exclusively to amounts that are "exempt" from income tax in Canada under a provision of such tax conventions, since the Québec government is not a party to these conventions. It is generally considered that an amount is exempt from tax where the tax convention stipulates that the income is taxable solely in the foreign state.

However, to avoid the double taxation that could result from certain situations, the Québec's tax legislation can also include, with adaptations based on its general principles, special rules contained in a tax convention signed by Canada.

In this context, a comprehensive study on the application in Québec law of the updated convention between Canada and the United States will be carried out by the ministère des Finances. In the event that, once this study is concluded, adjustments need to be made to Québec's tax legislation or regulations, such adjustments will be announced at a later date.

16 Essentially, these amendments are proposed by section 2, paragraph 2 of section 42 and sections 98 and 99 of the Notice of Ways and Means Motion of November 28, 2008.

17 DEPARTMENT OF FINANCE CANADA, News release 2008-104, December 15, 2008.

■ Other measures

The decision as to whether or not to adopt certain measures contained in the Notice of Ways and Means Motion of November 28, 2008, for which the ministère des Finances du Québec has yet to state its position, in particular the measures designed to facilitate the conversion of specified investment flow through entities into corporations, will be announced at a later date.



